

COUNTY OF KAUAIOFFICE OF THE COUNTY ATTORNEYMEMORANDUM

July 11, 2000

TO: HONORABLE BILLY KEALAMAIIKI SWAIN AB:18
Councilmember

FROM: BLAINE J. KOBAYASHI
Deputy County Attorney

RE: Bed and Breakfasts and Vacation Rentals

This memorandum responds to your June 15, 2000,* memorandum requesting an opinion on the legality of single-family vacation rentals in non-VDA areas. It is this office's opinion that under the current provisions of the CZO, single-family vacation rentals in non-VDA areas are not illegal. A brief discussion concerning the construction of zoning ordinances may provide guidance in the analysis.

A widely accepted and frequently repeated and applied rule in zoning litigation is that "zoning ordinances are in derogation of the common law and operate to deprive an owner of property of a use thereof which would otherwise be lawful, and should be strictly construed in favor of the property owner." See Anderson's, American Law of Zoning § 18.04; see also State v. Lum, 8 Haw. App. 406 (1991). Further, "zoning ordinances must spell out the prohibited uses of land with precision and completeness. Failing this, he can expect little help in the courts." Id.(citations omitted)..

This "mandate to construe strictly presents to the draftsman of a zoning ordinance not only the hazard that the terms used to describe prohibited uses of land will be narrowly construed, but that the courts will be generous in their construction of terms used to describe permitted uses. The consistent emphasis of the courts is upon the right of a landowner freely to use his property unless the limitations upon such use are clearly articulated." Id.(citations omitted). With this background, we now turn to the issue of the legality of single-family vacation rentals in non-VDA areas.

As you are aware, Section 8, Article 17 of the CZO addresses transient vacation rentals in the County. Except as provided in this section, transient vacation rentals are prohibited. "Transient vacation rentals" are defined as "rentals in a multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant." See Sec. 8-1.5 (emphasis added). On its face, the definition of

PL 2001-1(b)

is filed in non-agenda:
City Atty. by CP #1949-2000
P-105
12/6/2000 Jmtc

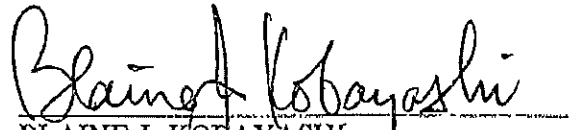
Hon. Billy Kealamaikahiki Swain

Page 2

July 11, 2000

transient vacation rentals does not include "single family vacation rentals" since a single-family vacation rental is not a "rental in a multi-unit building." Consequently, this section is inapplicable to single-family vacation rentals.

Presently, there is no provision in the CZO which directly prohibits single-family vacation rentals in non-VDA areas. In view of the law concerning construction of zoning ordinances, it would be advisable and prudent to amend, modify, or change the current provisions of the CZO to clearly establish policy regarding single-family vacation rentals in non-VDA areas if this is the objective of the administration or council.


BLAINE J. KOBAYASHI
Deputy County Attorney

BJK:jg

cc: Wallace G. Rezentes, Sr.